

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 JUAN ANDRES REYES,

Case No.: 2:19-cv-01013-APG-GWF

4 Petitioner

ORDER

5 v.

6 DIRECTOR JAMES DZURENDA, et al.,

7 Respondents

8
9 Petitioner Juan Andres Reyes has submitted a *pro se* petition for writ of habeas corpus,
10 under 28 U.S.C. § 2254 (ECF No. 1-1). However, Reyes has failed to submit an application to
11 proceed *in forma pauperis* or pay the filing fee. Accordingly, this matter has not been properly
12 commenced. *See* 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2. Thus, this action will be
13 dismissed without prejudice to the filing of a new petition in a new action with either the \$5.00
14 filing fee or a completed application to proceed *in forma pauperis* on the proper form with both
15 an inmate account statement for the past six months and a properly executed financial certificate.

16 I note that Reyes challenges the computation of his sentence, but it does not appear from
17 the petition that he has exhausted his state-court remedies. A federal court will not grant a state
18 prisoner's petition for habeas relief until the prisoner has exhausted his available state remedies
19 for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner
20 must give the state courts a fair opportunity to act on each of his claims before he presents those
21 claims in a federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *see also*
22 *Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the petitioner
23 has given the highest available state court the opportunity to consider the claim through direct

1 appeal or state collateral review proceedings. *See Casey v. Moore*, 386 F.3d 896, 916 (9th Cir.
2 2004); *Garrison v. McCarthy*, 653 F.2d 374, 376 (9th Cir. 1981).

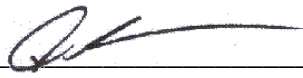
3 IT IS THEREFORE ORDERED that this action is **DISMISSED** without prejudice to the
4 filing of a new petition in a new action with either the \$5.00 filing fee or a properly completed
5 application to proceed *in forma pauperis*.

6 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**, as jurists of
7 reason would not find the dismissal of this improperly commenced action without prejudice to be
8 debatable or incorrect.

9 IT IS FURTHER ORDERED that the Clerk shall send the petitioner two copies each of
10 an application form to proceed *in forma pauperis* for incarcerated persons and a noncapital
11 Section 2254 habeas petition form, one copy of the instructions for each form, and a copy of the
12 papers that he submitted in this action.

13 IT IS FURTHER ORDERED that the Clerk shall ENTER JUDGMENT accordingly and
14 close this case.

15 Dated: June 27, 2019

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17 U.S. District Judge Andrew P. Gordon
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